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June 14, 2000

K. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

**Re: Tariff to Revise the Lifeline Tariff to Comply with the FCC Calls**

**Docket No. 00-00469**


Dear David:

The above-captioned matter is on the TRA's conference agenda for June 20, 2000.

Enclosed please find an original and thirteen (13) copies of a Petition of Discount Communications, Inc. For Leave to Intervene in the above-referenced docket. Also attached is our check in the amount of \$25.00 and a proposed Order. Copies have been served on all parties of record.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

  
Henry Walker

HW/db  
Enclosures  
c: Guy Hicks

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:           Tariff to Revise the Lifeline Tariff to Comply with the FCC Calls Order**

**Docket No. 00-00469**

**PETITION OF DISCOUNT COMMUNICATIONS, INC. TO  
CONVENE A CONTESTED CASE AND TO INTERVENE**

Discount Communications, Inc. ("Discount") petitions the Tennessee Regulatory Authority to open a contested case proceeding in the above-captioned docket and to permit Discount to intervene as a matter of right, pursuant to T.C.A. § 4-5-310.

Discount is a reseller of BellSouth's local exchange telephone service, including Lifeline service. In fact, Discount may well be the only telephone company in Tennessee, other than incumbent, local exchange companies, which offers and provides Lifeline services.

The above-captioned tariff was filed on June 6, 2000 by BellSouth Telecommunications, Inc. ("BellSouth"). According to BellSouth, the purpose of the filing is to amend BellSouth's Lifeline tariff in order to comply with the FCC's "CALLS" Order, released May 31, 2000.<sup>1</sup> In the "CALLS" decision, the FCC ordered certain changes in the Lifeline program which must be implemented by July 1, 2000.

As a provider of Lifeline service, Discount has a legally cognizable interest in any changes to BellSouth's Lifeline tariff. Furthermore, Discount --- like BellSouth --- believes that

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<sup>1</sup> *Sixth Report and Order in CC Docket Nos. 96-262 and 94-1. Report and Order in CC Docket 99-249 and the Eleventh Report and Order in CC Docket No. 96-45, released May 31, 2000.*

BellSouth's Lifeline tariffs must conform to the FCC's rules and orders. BellSouth's proposed amendments do not, however, accomplish that purpose.

BellSouth's amended Lifeline tariff violates FCC rules 51.607(a) and 51-603 (47 C.F.R. §§ 51.607(a) and 51.603) which require BellSouth to offer Lifeline service for resale at a wholesale rate which is equal to BellSouth's "retail rate," less avoided costs, and "subject to the same conditions" as the service BellSouth offers to its own end users. In other words, if BellSouth offers Lifeline service to end users at a discounted rate, that same discounted rate, less avoided costs, must also be offered to qualified resellers. As the FCC wrote in the "Universal Service Order" (Docket 97-157, Paragraph 370), resellers are entitled to "obtain Lifeline services at wholesale rates that include the Lifeline support amounts and pass these discounts through to qualifying low-income customers."

BellSouth's tariff, however, requires BellSouth to resell Lifeline service at a wholesale rate which substantially exceeds the retail price BellSouth charges its own Lifeline customers. Therefore, BellSouth's Lifeline tariff does not comply with the FCC's rules and orders.

Even BellSouth's attorneys have acknowledged that "it's a close call" whether BellSouth's Lifeline tariff is consistent with the FCC's rules.<sup>2</sup> In fact, the issue is not "close" at

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<sup>2</sup> As Mr. Turner said during closing argument in docket 00-00230, "Mr. Walker said the question is can BellSouth enforce a tariff that seems to be inconsistent with an FCC order? For the sake of argument let's just stay it's a close call. Let's say there's arguments for and against and it's a close call." Tr. 6-7.

In that proceeding, Mr. Turner defended BellSouth's refusal to "pass through" to resellers the intrastate Lifeline discount by arguing that the company's tariffs "are in place until altered" and that "BellSouth and everyone else is bound by them" the FCC's rules. Mr. Turner added, "If someone thinks that something the FCC has done has implicitly or arguably altered a  
(continued...)

all. The federal rules clearly prohibit BellSouth from charging a wholesale rate that is higher than BellSouth's retail rate. The tariff puts resellers in a classic antitrust "price squeeze" which prevents them from being able to compete effectively with BellSouth in the provision of Lifeline services.

Discount anticipates that, by the end of this year, the Authority will establish an intrastate, universal service fund for the purpose of funding the state's share of the Lifeline program. BellSouth has repeatedly told the Authority that, once such a fund is established, BellSouth itself will amend its tariff to "pass through" to resellers all Lifeline support amounts, both state and federal, as the FCC's rules require.<sup>3</sup> For now, though, BellSouth is apparently content to let the issue of whether the tariff is legal remain a "close call."

The TRA cannot afford to be so complacent in regard to this issue which could jeopardize Tennessee's participation in the Lifeline assistance program. See the post-hearing brief filed in docket 00-00230 by the Consumer Advocate Division of the Office of the Attorney General. Therefore, pending adoption of an intrastate universal service fund, Discount asks that BellSouth's Lifeline tariff be amended to conform with the FCC's rules.

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<sup>2</sup>(...continued)

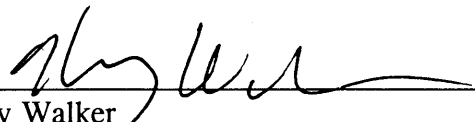
preexisting TRA order, the appropriate procedure is to come to the TRA and say please give us a ruling..." Tr, at 7.

Discount now makes that request.

<sup>3</sup> See, for example, the testimony of BellSouth witness O'Bannon in docket 00-00230. Tr. 566 (Vol. III).

Discount therefore asks that the TRA convene a contested case on BellSouth's proposed tariff changes and the Discount be allowed to intervene as a party in that proceeding.

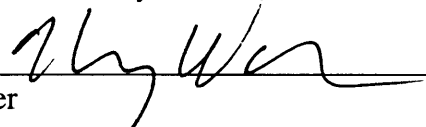
Respectfully submitted,

  
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414 Union Street, Suite 1600  
P.O. Box 198062  
Nashville, TN 37219

Counsel for Discount Communications, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded, via U.S. Mail, postage prepaid, to Guy Hicks, BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 219, Nashville, Tennessee 37201-3300 on this 14th day of June, 2000.

  
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Henry Walker